

BEFORE THE TENNESSEE REGULATORY AUTHORITY
AT NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.
'99 MAY 10 PM 4 15
OFFICE OF THE
EXECUTIVE SECRETARY

CONSUMER ADVOCATE DIVISION)

v.)

UNITED TELEPHONE SOUTHEAST)

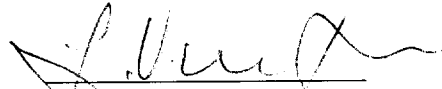
DOCKET NO. 98-00626)

RESPONSE TO MOTION TO STRIKE

Comes the Consumer Advocate Division in response to UTSE's motion to strike and admits that the hearing officer prohibited testimony in this proceeding regarding the treatment of payphone subsidies as it related to aggregate revenue increases under Tenn. Code Ann. § 65-5-209. CAD further admits that it did not raise the matter by appealing the hearing officer's decision, but contends that it has no duty to present futile motions, and that such an appeal would have been futile based upon the Tennessee Regulatory Authority's decision in Docket No. 95-02614. Nevertheless, CAD intends to preserve the issue and will present an evidentiary proffer. The Consumer Advocate Division may also file a request for a declaratory judgment on the issue.

CAD believes the failure to consider payphone subsidies in this proceeding would be arbitrary and capricious and not in accordance with law as provided by 47 U.S.C. 276. Moreover, continuing to directly or indirectly subsidize causes consumers to pay inappropriate rates and harms competitive payphone providers.

Respectfully submitted,



L. Vincent Williams
Consumer Advocate
Office of the Attorney General & Reporter
425 Fifth Avenue North, Second Floor
Nashville, TN. 37243-0500
615-741-8700

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing Petition has been faxed and or mailed postage prepaid to the parties listed below this 10 day of May 1999.

James B. Wright, Esq.
United Telephone-Southeast, Inc.
14111 Capital Blvd.
Wake Forest, NC 27587-5900

Guy Hicks, Esq.
BellSouth Communications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

John Hanlin
Tri-Cities Regional Airport Authority
PO Box 1055
Blountville, TN 37617-1055

Bruce Shine/ ANTRCDC
Law Offices of Shine and Mason, Suite 201
433 East Center Street
Kingsport, TN 37660


L. Vincent Williams